United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

To be argued by
JOSEPH I. STONE

76-1572

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

76-1572

UNITED STATES OF AMERICA,
Appellee,

-v-

ROBERT GRANT,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX FOR DEFENDANT-APPELLANT
ROBERT GRANT

1/19

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA, :
Appellee,

-v- :

ROBERT GRANT, :
Defendant-Appellant.

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PRELIMINARY STATEMENT

Defendant-appellant Robert Grant appeals from a judgment of conviction entered after plea with a stipulation preserving his rights to appeal before Hon. Kevin T. Duffy, United States District Judge, entered on the 18th day of November, 1976. Defendant-appellant pleaded guilty to eight counts of a sixteen count indictment under 76 Cr. 762 alleging individual charges of possessing stolen mail. Judge Duffy sentenced the defendant to two years in prison on November 18, 1976, but prior to accepting the plea, there was a stipulation entered on the record between the court, the defendant, counsel for the government and counsel for defendant that a pre-trial motion heard before Hon. Robert L. Taylor sitting by designation in the United States District Court for the Eastern District of Tennessee, be considered for appellate purposes. Judge Taylor conducted an extensive hearing and wrote a sixteen-page opinion denying defendant's

relief to suppress mail seized at the time of his arrest.

The defendant is remanded pursuant to a parole warrant in New York State and bail was not sought pending determination by this Court.

The undersigned was assigned to represent the defendant in the lower court and this assignment was continued pursuant to an order of the court dated December 14, 1976.

STATEMENT OF FACTS

The facts concerning the arrest of Robert Grant and his co-defendant George Lawrence are not essentially in dispute. The law is being challenged and the court is asked to make a determination as to whether the lower court was correct or not.

Basically, Grant and Lawrence, two black defendants, were observed by two white secret service agents in the vicinity of 42nd Street between Seventh and Eighth Avenue, New York, New York. According to Agent Quinn, the Playland Arcade was a notorious spot where false identification could be purchased in New York City. This court could take judicial notice that there are probably thousands of other places within the metropolitan area that would also produce false identifying items. Nevertheless, Agent Quinn observed Robert Grant purchase what he thought were two social security -- facsimile social security cards (6R.) It is conceded by the government and by the lower court that the mere purchasing of two facsimile social security cards is not a crime. After purchasing these cards, Grant left the store, appeared to be in conversation with Lawrence and proceeded in a

northerly direction accompanied by Lawrence. During Grant's walk from 42nd Street to 45th Street, he did not commit any illegal acts. Lawrence, however, was carrying a paper bag wrapped up in newspaper which was torn at one end. The agent claimed, and this was accepted by the fact finder below, that he could see what he believed to be a polaroid camera protruding from the bag and in addition to the polaroid camera he saw what he thought was a "green colored" government check. This led him to believe that the bag contained government mail and/or checks and he stopped and questioned Grant and Lawrence. Prior to the stopping of Grant and Lawrence, Quinn did nothing to confirm his suspicions concerning the purchase of the social security cards. He did not question anyone at the playland (59R).

As both defendants were about to cross 45th Street, Quinn took out his badge and identification card and held it in front of both defendants stating to them that he would like to talk to them and would they please pull off when they got across the intersection, (10R). Agent Quinn, on cross examination, indicated that Mr. Grant was free to go on his own way. However, he admitted not advising him of that and further, on the initial stopping

of Grant, he did not tell Grant that he had a right not to answer any questions (67R). There was no attempt to justify the arrest of Grant as a weapons search because the frisking or search took place after Quinn had looked into the bag and after he put the handcuffs on Grant. According to Quinn, Lawrence voluntarily turned the bag over to him but Grant was never asked whether he consented to Lawrence's handing over the bag or whether Grant at that time had any proprietary interest in the bag. Quinn also admitted that he had no personal knowledge that a theft of government checks had taken place a day or two before (68R). It is the defendant-appellant Grant's position that he was effectively arrested on 45th Street and Seventh Avenue when Quinn told him to stop, asked him questions about social security cards and then recovered the package from Lawrence. That arrest was based solely on mere suspicion and not upon probable cause and anything the government seized thereafter from Lawrence could not be offered in evidence against Grant and the statement of Grant would have been illegal as being the fruits of an illegal search.

Judge Taylor, in his elaborate opinion, outlined what he thought constituted reasonable suspicion or

sufficient grounds that the defendants were engaging and preparing in criminal activity. Page 11 of his decision shows:

"(1) Observation of defendants in a location known to be a common source of false identification materials.

(2) Observation of defendant Grant purchasing not one, but two facsimile social security cards.

(3) The above activity observed on a day known to be a prime time for activity in stolen checks.

(4) Observation of defendant Lawrence carrying a semi-disguised brown package with what appeared to be a Polaroid camera sticking out.

(5) Observation, within five feet, of portion of a U.S. Treasury check, and brown manila envelopes similar to those in which checks are mailed, both protruding from Lawrence's package.

(6) Observation of Lawrence's "stiffening" on apparent sighting of Agent Dougherty.

The particular experience of Agent Quinn in cases involving stolen checks and specifically activity around Playland, is also a factor due some weight.

Based on these factors, and the record as a whole, we hold that the agents had reasonable cause to stop defendants for investigative purposes."

QUESTION PRESENTED

1. WAS THE ARREST AND SUBSEQUENT SEARCH OF ROBERT GRANT LEGAL?

ARGUMENT

This case has a similar fact pattern that caused this court to declare the search illegal in U.S. v. Deltoro, 464 F. 2d 520. Here, as in Deltoro, the court correctly concluded that;

"A police officer may forcibly stop a suspect, and promptly conduct a superficial pat-down for weapons if in the light of his experience he reasonably perceives the threat of harm in a given factual situation. Terry v. Ohio, 392 U.S. 1, 26, 33, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968); Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed. 2d 612 (1972). Cf. LaFave, "Street Encounters" and the Constitution: Terry, Sibron, Peters and Beyond, 67 Mich.L.Rev. 40, 57 (1968)."

The Court further stated that:

"Police action justified at its inception may quickly exceed the reach of that justification:

> The sole justification . . . (a limited search for weapons) is the protection of the police officer and others nearby, and it therefore must be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.

Terry v. Ohio, 392 U.S. at 29, 88 S.Ct. at 1884."

In this case,as in Deltoro, the officer's version of the arrest was not made until after the search of Lawrence's package and the opening which disclosed the contraband.

The existing search and seizure law emanating from Carrie v. Ohio, 392 U.S. 1, and its progeny, has not yet overruled Rios v. U.S., 359 U.S. 965, where the Supreme Court stated:

"If, therefore, the arrest occurred when the officers took their positions at the doors of the taxicab, then nothing that happened thereafter could make that arrest lawful or justify a search as its incident. United States v. DiRe, 332 U.S. 581; Johnson v. United States, 333 U.S. 10; Miller v. United States, 357 U.S. 301; Henry v. United States, 361 U.S. 98. But the government argues that the policeman approached the standing taxi only for the purpose of routine interrogation, and that they had no intent to detain the petitioner beyond the momentary requirements of such a mission. If the petitioner thereafter voluntarily revealed the package of narcotics to the officers' view, a lawful arrest could then have been supported by their reasonable cause to believe that a felony was being committed in their presence. The validity of the search thus turns upon the narrow question of when the arrest occurred, and the answer to that question depends upon an evaluation of the conflicting testimony of those who were there that night."

If this court finds that the arrest of Grant was without probable cause regardless of whether or not agents had probable cause to arrest Lawrence, then the statements taken from Grant should be suppressed under Wong Sun, v. U.S., 371 U.S. 471, where the court stated:

"It is conceded that Toy's declarations in his bedroom are to be excluded if they are held to be "fruits" of the agents' unlawful action.

In order to make effective the fundamental constitutional guarantees of sanctity of the home and inviolability of the person, Boyd v. United States, 116 U.S. 616, this Court held nearly half a century ago that evidence seized during an unlawful search could not constitute proof against the victim of the search. Weeks v. United States, 232 U.S. 383. The exclusionary prohibition extends as well to the indirect as the direct products of such invasions. Silverthorne Lumber Co. v. United States, 251 U.S. 385. Mr. Justice Holmes, speaking for the Court in that case, in holding that the Government might not make use of information obtained during an unlawful search to subpoena from the victims the very documents illegally viewed, expressed succinctly the policy of the broad exclusionary rule:

> "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the Government's own wrongs cannot be used by it in the way proposed." 251 U.S. at 392.

The Exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of, an unlawful invasion. It follows from our holding in Silverman v. United States, 365 U.S. 505, that the Fourth Amendment may protect against the overhearing of verbal statement as well as against the more traditional seizure of "papers and effects." Similarly, testimony as to matters observed during an unlawful invasion has been exluded in order to enforce the basic constitutional policies. McGinnis v. United States, 227 F. 2d 598. Thus, verbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest as the officers' action in the present case is no less the "fruit" of official illegality than the more common tangible fruits of the unwarranted intrusion."

If this court were to sustain the search and subsequent seizure from Grant then effectively agents can stop and search anybody in a dragnet fashion contrary to the ruling of the Supreme Court of the United States in Davis v. Mississippi, 394 U.S. 721. Probable cause to arrest one person does not give the agents probable cause to arrest another, even if they are walking down the same street.

CONCLUSION

The arrest of Grant was illegal, the seizure of evidence taken from Lawrence should not have been admitted as against Grant; other contraband items taken from Grant should be excluded and the statements from Grant after an illegal arrest should be suppressed. Therefore, the judgment of conviction should be vacated and the indictment dismissed.

Respectfully submitted,

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INDEX TO APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA : INDICTMENT

-v- : 76 Cr. 762

ROBERT GRANT and
GEORGE LAWRENCE, :

Defendants :

The Grand Jury Charges:

On or about the 3rd day of August, 1976, in the Southern District of New York, ROBERT GRANT and GEORGE LAWRENCE, the defendants, did unlawfully, wilfully and knowingly have in their possession the contents of the check-letters set forth below which had been stolen, taken, embezzled and abstracted from and out of the United States mail, knowing the same to have been stolen, taken, embezzled and abstracted:

Count	Addressee	Contents
1.	Hugh M. Hamilton 467 W. 159th St. New York, N.Y. 10032	United States Treasury Check No. 22,978,446 In the Amount of $674.24
2.	Freddie Mitchell 463 W. 159 St. Apt. 52 New York, N.Y. 10032	United States Treasury Check No. 32,258,663 In the Amount of $53.89
3.	Gertrude L. Parker 545 Edgecombe Ave. Apt. 1A New York, N.Y. 10032	United States Treasury Check No. 23,942,501 In the Amount of $427.26
4.	Frank Kornegay 545 Edgecombe Ave. New York, N.Y. 10032	United States Treasury Check No. 9,176,114 In the Amount of $450.75
5.	George S. Jefferson 465 W. 159th St. Apt. 33 New York, N.Y. 10032	United States Treasury Check No. 22,978,486 In the Amount of $388.00
6.	Marie Minnis 467 W. 159th St. New York, N.Y. 10032	United States Treasury Check No. 22,978,447 In the Amount of $267.79

Count	Addressee	Contents
7.	Gazetta Major 547 W. 157th St. New York, N.Y. 10032	United States Treasury Check No. 32,257,504 In the Amount of $240.30
8.	Bella S. Hye 467 W. 159th St. New York, N.Y. 10032	United States Treasury Check No. 23,579,393 In the Amount of $289.50
9.	Cassie Bryant 465 W. 159th St. Apt. 22 New York, N.Y. 10032	United States Treasury Check No. 32,257,652 In the Amount of $221.80
10.	Annie M. Johnson 527 W. 157th St. AC New York, N.Y. 10032	United States Treasury Check No. 32,258,445 In the Amount of $218.55
11.	Robert S. Strother 470 W. 159th St. Apt. 4W New York, N.Y. 10032	United States Treasury Check No. 8,379,946 In the Amount of $251.10
12.	Dolores Myers 545 Edgecombe Av. Apt. 5C New York, N.Y. 10032	United States Treasury Check No. 32,259,514 In the Amount of $167.80
13.	Earl Thompson 467 W. 159th St. FR. BSMT New York, N.Y. 10032	United States Treasury Check No. 32,295,369 In the Amount of $158.00
14.	Jean M. Wells % Rev. Hunt 545 Bogecomb Ave. Apt. 2E New York, N.Y. 10032	United States Treasury Check No. 9,839,915 In the Amount of $157.67
15.	Andrew Dawson 465 W. 159th St. New York, N.Y. 10032	United States Treasury Check No. 32,258,914 In the Amount of $157.80

(Title 18, United States Code, Sections 1708 and 2.)

COUNT SIXTEEN

The Grand Jury further charges:

On or about the 3rd day of August, 1976 in the Southern District of New York, ROBERT GRANT and GEORGE LAWRENCE

the defendants, unlawfully, wilfully and knowingly falsely made, forged and counterfeited a writing, namely, the endorsement of the payee on a check, to wit, the words Freddie Mitchell on the back thereof, for the purpose of obtaining from the United States and their officers and agents a sum of money, the check being a genuine obligation of the United States, and of the following tenor:

(Title 18, United States Code, Sections 495 and 2.)

FOREMAN

ROBERT B. FISKE
United States Attorney

EXCERPTS FROM TESTIMONY

6R C H A R L E S J. Q U I N N, Jr., called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BLOCH:

Q Now, will you please tell Judge Taylor what, if anything, occurred at 2:45 P.M. at Playland?

A Agent Dougherty and I were at Playland. Agent Doughterty stationed himself outside of the front of Playland, at my direction. I entered inside. We observed two black males; the defendants, were standing in front of the glass counter where the false identification is sold. I observed the defendant, Mr. Grant, purchase two Social Security cards, facsimile Social Security cards, they are not genuine, and the two defendants left the store -- left the arcade.

10R

Q Would you please continue.

A At that time as they were about to cross 45th Street, I stepped forward so I was to the side of and slightly ahead of Mr. Lawrence's right-hand side. I took my badge and identification card out of my pocket, held it in my right hand, placed it in front of both defendants so that they could see it, and stated to them I would

like to talk to them, and would they please pull off when they got across the intersection. The four of us,

11R

Agent Dougherty, the two defendants and I, crossed the intersection. When we got to the northwest corner of 45th Street, the defendants and Agent Dougherty and myself stopped on the corner there.

Q At that time did you display any firearm?

A No, sir.

Q Did you tell the defendants they were under arrest?

MR. JACOBS: Obje ction to leading.

THE COJRT: No, I overrule the objection.

A No, I did not.

Q Up to this point had you said anything else to the defendants?

A Not a thing.

59R

CROSS EXAMINATION BY MR. STONE:

Q Agent Quinn, before you left Playland, did you have occasion to question or interview the salesman at Playland?

A No, I did not.

Q So you did not verify from anyone in Playland what Mr. Grant did, concerning the purchase of any identification, did you?

A I had seen what he did, there was no need to verify it.

Q Many people buy facsimile Social Security cards, don't they?

A I don't know. I have no way of knowing that.

Q Is it against the law for Playland to sell a facsimile Social Security card?

A I'm not a lawyer, but I would say if the man knew the purpose for which it was being used, it would

60R

be against the law. It would be aiding and abetting a crime.

Q Of course that man would have to ask questions?

A I think the man over there pretty much does not ask questions.

67R

Q Was Mr. Grant free to go his own way?

A Yes, he was.

Q And did you advise him of that?

A No, sir, I did not.

Q Did you tell Mr. Grant he had a right not to answer any of your questions?

A No, I did not.

Q At any time did you search Mr. Grant for a weapon or suspected weapon?

A Yes, sir.

Q When was that?

A I believe at the time we were putting the handcuffs on.

Q Was that after you had searched the bag?

A After I had looked in the bag, yes, sir.

68R

Q Did you have any personal knowledge that a theft of government checks had taken place a day or two before?

A No, sir.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-against-	:	MEMORANDUM AND ORDER
ROBERT GRANT and GEORGE LAWRENCE,	:	76 Cr. 762
Defendants.	:	

APPEARANCES:

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HOWARD L. JACOBS, ESQ.
401 Broadway
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Attorney for Defendant George Lawrence

TAYLOR, D.J.*

Robert Grant and George Lawrence are charged in the first fifteen counts of a sixteen-count indictment with unlawfully, wilfully and knowingly having in their possession the contents of certain check-letters stolen from the United States Mail, knowing the same to have been stolen. In the sixteenth count they are charged with unlawfully, wilfully and knowingly forging the endorsement of the payee, Freddie Mitchell, on the back of a check, for the purpose of obtaining from the United States Government a sum of money, the check being a genuine obligation of the United States.

Each defendant has moved to suppress all evidence seized by the Government agents claiming that such seizure was in violation of the Fourth Amendment to the United States Constitution and Rule 41 of the Federal Rules of Criminal Procedure. Defendants also seek to have suppressed certain statements made by them to the Government officers while under arrest. The motions are supported by an affidavit of each defendant.

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*Judge Robert L. Taylor of the United States District Court for the Eastern District of Tennessee is sitting by designation.

I. THE EVIDENCE

At the hearing on this motion, Agent Quinn, both defendants, and a U. S. Postal Inspector testified as to the events occurring on August 3, 1976. Agent Quinn's testimony may be summarized as follows. On August 3, 1976, he was in the process of training Agent Dougherty.[1] He had taken Agent Dougherty to Playland Arcade on West 42nd Street to show him where false identification cards were often purchased for use in cashing stolen government checks. Agent Quinn testified that in the last three years he had been involved in "no less than 25 cases" involving stolen government checks in which the false identification cards were purchased at Playland Arcade. Agent Quinn also added that he had made at least 400 arrests for stolen government checks in his seven years as a Secret Service Agent.

At approximately 2:45 p.m., while standing some twenty feet from the counter where facsimile social security cards were sold, Agent Quinn observed two young

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[1] Agent Quinn referred to August 3rd, or the 3rd of any month, as "check day." He explained that it was on this day of each month that the Treasury Department issues Social Security checks. The preceding day, August 2nd, was the day on which Supplemental Security Income checks were issued by the government.

men approach the counter. One of the men, later identified as defendant Grant, purchased two facsimile social security cards. On cross-examination, Agent Quinn demonstrated extremely accurate vision when confronted with four small cards at a distance equal to that from which he observed the purchase of the facsimile social security cards. Quinn also observed that defendant Lawrence had a bulky package under his right arm.[2] As the defendants left Playland, the agents followed them, at first closely, gradually dropping back to about 35 feet, so as to arouse less suspicion of the defendants.

At some point, as the defendants walked up the west side of Seventh Avenue, defendant Lawrence shifted the package so that he was holding it with his right hand underneath the package. As they proceeded up Seventh Avenue, the agents began to close the gap between themselves and the defendants. At some point between 42nd and 43rd Street, Agent Quinn observed something sticking out of a hole in the rear of the package

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[2]The "package" was a brown paper bag folded in half, covered with a folded copy of a newspaper.

which appeared to him to be a Polaroid camera of the type often used to take pictures for false identification cards.[3]

As the agents began to follow closer to the defendants, Quinn observed about a one-half inch by three-quarter inch portion of what appeared to him to be a U. S. Treasury check.[4] A few moments later, he also noticed that portions of two "brown manila envelopes" were sticking out of the hole in the package, and that these envelopes appeared to be of the same color used to mail U. S. Treasury checks.

When the defendants had to stop at 45th Street for traffic, the agents came to within approximately five feet of them. Quinn said he then confirmed that the green object was indeed the corner of a Treasury check.[5]

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[3]Quinn stated he saw a part of a black and silver object, which he thought was a camera. He was about 20 feet behind defendants at this point. Quinn stated that Polaroid cameras were often used to make quick pictures to attach to forged identification.

[4]On cross-examination, Quinn said his primary reason for reaching this conclusion was that the object observed had that distinctive shade of green associated with U. S. Treasury checks, which he called "government check green."

[5]The Government's brief adds that not only are U. S. Treasury checks of a distinctive color, but have rounded corners, making them somewhat unique documents.

While standing behind the defendants at this close proximity, Quinn observed that defendant Lawrence turned his head to the left and apparently caught a glimpse of Agent Dougherty. Quinn said defendant Lawrence then "stiffened" and "shuddered" upon the apparent recognition that he and defendant Grant were being followed.

As the defendants started to cross 45th Street, Quinn went around them on their right, held his badge in front and between the two defendants, giving them time to read the inscription. He then requested the defendants to "please pull over" at the corner because he would "like to talk to them." Both agents were in plain clothes, and no weapons were exhibited.

Quinn then asked Grant if he had just purchased some identification cards at Playland. Grant, after hesitation, responded affirmatively. Quinn asked Grant what he intended to do with the cards, and, after hesitation, Grant said they were for his own use. Quinn then asked Lawrence, "Could I see what you have in that package?" Lawrence handed over the package, and Quinn immediately placed it on the sidewalk and crouched down over it to examine the contents. Quick scrutiny of

the contents revealed many items, including the following: several commercial and government checks; many pieces of identification; photographs of both defendants of the type generally used on identification cards; various envelopes, one of considerable bulk labeled "Jursey [sic] checks"; and an electronic calculator.[6]

The agents immediately arrested and handcuffed the defendants. The bag was seized.[7] Personal search of defendants turned up an additional commercial check on Lawrence and false identification on both defendants. Defendants later gave inculpatory statements to agents.

Both Quinn and the Postal Inspector testified that Grant, during the time of questioning, appeared alert, responsive, and in command of his senses, revealing no symptoms of being under the influence of drugs.[8]

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[6] This was the black and silver object which Quinn thought was a Polaroid camera.

[7] It was found to contain about 22 commercial checks, 29 U.S. Treasury checks, and 42 pieces of identification.

[8] Quinn stated he had seen at least twenty persons under the influence of drugs, and described many symptoms of such condition, none of which the defendant exhibited.

On cross-examination, Quinn stated at no time prior to the examination of the bag did he intend to arrest either defendant; that their path was not blocked, and they could have walked away at any time.

According to Agent Quinn, the defendants were arrested at about 3:00 p.m. They were taken to an office and questioned until approximately 7:00 p.m.

Defendant Lawrence's testimony may be summarized as follows. He never entered Playland, but met defendant Grant outside and walked up 7th Avenue. At some point on their walk, the agents ran up to them, exhibited a badge, and "threw us up against the wall." Quinn asked Grant something, which Lawrence didn't hear. Quinn then asked Lawrence what he had in the bag, and when he (Lawrence) failed to answer, Quinn "took the bag" from him. The agents then arrested and handcuffed the defendant. Lawrence then added that the bag had no hole in it then.[9]

On cross-examination, the United States Attorney brought out inconsistencies in Lawrence's testimony and

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[9]The bag, as introduced into evidence, did have a hole in one corner of several inches in diameter. Agent Quinn testified the hole was the same size as when the bag was carried by Lawrence.

his signed affidavit. Lawrence also admitted the prior use of three false names when dealing with law enforcement officials. Counsel stipulated that Lawrence once plead guilty to a charge of conspiracy to make false statements to a firearms dealer in the Eastern District of New York.

Defendant Grant's testimony focused primarily on his claim that his confession was involuntary due to his being under the influence of narcotics. He did affirm that he was arrested very soon after being shown a badge and that Quinn "took the bag" from Lawrence.

He claims that he was coerced into the confession because Quinn told him the longer he waited to confess, the longer it would be before he could get to the Metropolitan Correctional Center to see a doctor for his alleged withdrawal pains. He added that his primary symptom was being "unbearably cold" and that he not only informed Quinn of his discomfort and requested coffee, but that he was "shivering."

On cross-examination, the United States Attorney asked Grant if he knew what he was doing during the

questioning to which he responded, "Yes." He also affirmed that he was articulating well that afternoon. He then added that he was "nervous," suffered from "undue coldness" and was "nauseated."

Based on all the evidence before the Court, and after carefully observing the demeanor and weighing the credibility of the conflicting testimony, the Court finds that Quinn's testimony was an accurate account of the facts concerning the events in question which occurred August 3, 1976.

II. INVESTIGATIVE STOP

The standard for determining when an "investigative stop" of private citizens is proper was first articulated in Terry v. Ohio, 392 U.S. 1 (1968), as follows:

> "Would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?"
>
> 392 U.S. 1, at 21-22.

While this standard hardly provides a definitive guideline for judging police conduct,[10] we are of the

[10] See generally, J.Cook, Constitutional Rights of the Accused, Pre-Trial Rights, § 7 (1972).

opinion this "reasonableness" standard has been met here. Judge Friendly, in United States v. Santana,[11] described this test as a "rather lenient" one.

We delineate the following factors, all observed by Agent Quinn prior to his request that defendants stop, and find them, taken as a whole, sufficient grounds for an agent with Quinn's experience to reach a reasonable suspicion that the defendants were engaging or preparing to engage in criminal activity.

(1) Observation of defendants in a location known to be a common source of false identification materials.[12]

(2) Observation of defendant Grant purchasing not one, but two facsimile social security cards.

(3) The above activity observed on a day known to be a prime time for activity in stolen checks.

(4) Observation of defendant Lawrence carrying a semi-disguised brown package with what appeared to be a Polaroid camera sticking out.

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[11] 485 F.2d 365, 368 (2d Cir. 1973), cert.den. 415 U.S. 931.

[12] Cf. United States v. Hall, 525 F.2d 857 (D.C.Cir. 1976) (area associated with drug traffic); United States v. Santana, 485 F.2d 365 (2d Cir. 1973) (restaurant associated with narcotics trade).

(5) Observation, within five feet, of portion of a U. S. Treasury check, and brown manila envelopes similar to those in which checks are mailed, both protruding from Lawrence's package.

(6) Observation of Lawrence's "stiffening" on apparent sighting of Agent Dougherty.[13]

The particular experience of Agent Quinn in cases involving stolen checks and specifically activity around Playland, is also a factor due some weight.[14]

Based on these factors, and the record as a whole, we hold that the agents had reasonable cause to stop defendants for investigative purposes.

III. CONSENT TO SEARCH

In Schneckloth v. Bustamonte, 412 U.S. 218 (1973), the Supreme Court determined that the issue of "voluntariness" in an alleged consensual search, is an issue of fact. The Court refused to adopt the lower court's use of a "knowing and intelligent" waiver requirement.

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[13] Cf. United States v. Hall, 525 F.2d 857, 860 (D.C. Cir. 1976).

[14] See United States v. Davis, 458 F.2d 819 (D.C.Cir. 1972); United States v. Wabnick, 444 F.2d 203 (2d Cir. 1971).

On the facts of this case, it is to be noted that no weapons were exhibited, and no force applied in stopping defendants. We find and conclude that Lawrence's consent was voluntary, as opposed to one made under coercion or duress.

IV. PROBABLE CAUSE TO ARREST

The test for arrest without a warrant is whether or not the facts available to the officers at the time of arrest would warrant a man of reasonable caution to believe that a crime had been committed. Beck v. Ohio, 379 U.S. 89 (1964); Carroll v. United States, 267 U.S. 132 (1925).

After the defendants were stopped for questioning and after examining the contents of Lawrence's bag pursuant to his consent, sufficient evidence was developed to establish probable cause for arrest without a warrant. United States v. Watson, 423 U.S. 411 (1976); United States v. Robinson, 414 U.S. 218 (1973). Many factors demonstrated probable cause to arrest both defendants upon examination of the contents of the bag.

Various types of identification cards were in the possession of the defendant Lawrence. Some of them were

in the names of different people; some were blank. Detached pictures of the defendant Lawrence and defendant Grant and plastic coverings of the nature used to protect identification were found. All of this indicates that the defendants were in the business of collecting and manufacturing identification cards for the purpose of cashing stolen checks such as those found in their possession.

Freddie Mitchell's medical identification card which had been altered to fit the description of the defendants indicated defendants were planning to engage in a crime. A United States Treasury check for $53.89, made payable to Freddie Mitchell, was in the possession of defendants. They had in their possession other Government checks and the paraphernalia to match identification cards to them, and alteration of legitimate identification matching those checks was further evidence that defendants were engaged in illegal check stealing.

Each case involving probable cause must stand on its own facts. Wong Sun v. United States, 371 U.S. 471, 479 (1963).

V. GRANT'S CONFESSION

While the use of narcotics and alcohol are valid factors in determining whether a confession was made "voluntarily," there are other equally important factors.[15] The question here focuses on the "due process" voluntariness standard, as there is no argument that the proper Miranda warnings were given to Grant.

Confessions given while under the influence of drugs are not per se involuntary confessions.[16]

It appears from all the testimony that defendant Grant's confession was given voluntarily and while he was under control of his senses and fully understood the consequences of his statements. Neither does the Court believe that he was induced or coerced into giving these statements.

VI. LAWRENCE'S CONFESSION

No testimony was heard on circumstances surrounding Lawrence's confession. We assume the motion to suppress his statements was based on the "fruit of the poisonous tree"

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[15] See generally, J.Cook, Constitutional Rights of the Accused, Trial Rights, § 73 (1974).

[16] Ortiz v. United States, 318 F.2d 450 (9th Cir. 1963).

doctrine. Since we have found no constitutional violations from which a "poisonous tree" could grow, it follows that the confession of Lawrence (and Grant) could not be fruit therefrom.

In the opinion of the Court, defendants' motions to suppress are not supported by the facts and the law and must be overruled.

It is, accordingly, ordered by the Court that each motion to suppress be, and the same hereby is, denied.

Robert Taylor
United States District Judge

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1/19/78 - 10:35 A.M.
James P. Lavin, AUSA